



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 6, 2001

Re: Order Requiring Installation of Measuring Devices

Dear Water User,

The Department of Water Resources (the Department) has issued the enclosed preliminary order requiring installation of measuring devices and lockable controlling works for diversions of water from the Big Lost River and tributaries above Mackay Reservoir. Pursuant to Section 67-5243, Idaho Code, the preliminary order will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet. The records of the Department and Water District 34, Big Lost River and tributaries, indicate that you are a water right holder who owns or operates a diversion from the Big Lost River or tributaries of the Big Lost River above Mackay Reservoir. A copy of the order and this letter is being sent to those users identified in Attachment A of the order. Note that some users with diversions from Warm Springs Creek and tributaries above Mackay Reservoir may be excluded from Attachment A because a separate order was sent to them last year. Several users with diversion from the Big Lost River above Chilly Bridge may also be omitted from Attachment A because they received a separate order dated July 6, 2001.

You should have received a notice from the department dated June 18, 2001 concerning your diversions on the Big Lost River above Mackay Reservoir. That letter provided notice that IDWR will require installation of measuring devices and lockable headgates unless exempt by the department under Rule 35.05 of the Water District 34 Water Distribution Rules (see attached copy of rule). The Department allowed some time for users to contact the watermaster or the Department directly to review diversions and consider on a case-by-case basis potential exemptions of measuring device and headgate requirements pursuant to Rule 35.05. The watermaster met with some users and looked at a number of diversions in the area regarding possible exemptions and other issues. The watermaster determined that there are several diversions that can potentially meet the exemption criteria of Rule 35.05 if the headgates are located at the ditch headings near the river. However, the watermaster has also recommended that headgates on these diversions can be installed some distance down the ditch in order to provide both protection of the structure and control of water. The watermaster therefore has not recommended waiving measuring device or headgate requirements for any of the diversions between the Chilly Bridge and Mackay Reservoir. No other water users in the area have petitioned the department or watermaster directly to exempt additional diversions from potential measuring device and headgate requirements. Based on consultation with the watermaster, the Department believes it is appropriate to proceed with ordering installation of measuring devices and headgates for diversions above the reservoir and below Chilly Bridge.

Please contact the watermaster directly at 208-588-3137, or contact me directly at 208-327-7864 if you have concerns or questions regarding the enclosed order.

Sincerely,



Tim Luke

Water Distribution Section

Cc: Mailing List

Doug Rosenkrance, Watermaster

IDWR Eastern Region

Big Lost Irrigation District

Enclosure

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING)
DEVICES AND CONTROLLING WORKS ON THE)
BIG LOST RIVER ABOVE MACKAY RESERVOIR,)
PART OF WATER DISTRICT 34)

PRELIMINARY
ORDER

On June 7, 2001 the Idaho Department of Water Resources (Department) received a petition from water right holders on the Big Lost River requesting the Department to enforce installation of measuring devices for irrigation diversions in Water District 34 located upstream of Mackay Reservoir. On June 18, 2001 the Department sent notice to water users with diversions above Mackay Reservoir regarding the need to install measuring devices and headgates. After consultation with the watermaster of Water District 34, the Department finds that inadequate measuring devices and lockable controlling works presently exist for certain diversions on the Big Lost River in Water District 34.

Section 42-701, Idaho Code, provides:

42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING WORKS AND MEASURING DEVICES BY WATER APPROPRIATORS – PROCEDURE UPON FAILURE TO INSTALL AND MAINTAIN – MEASURING AND REPORTING OF DIVERSIONS – PENALTY FOR FAILURE TO COMPLY – REPORT FILING FEE.

1. The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such

headgates, rating flumes or other measuring devices shall be approved by the department of water resources. ...

3. Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices..., upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to section 42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

4. The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

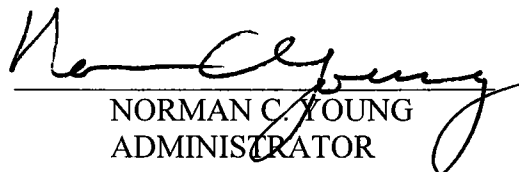
ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

1. Those water users identified in Attachment A of this order diverting water from the Big Lost River above Mackay Reservoir shall install measuring devices and lockable controlling works of a type acceptable to the Department prior to diverting water during the 2002 irrigation season.

2. The watermaster shall shut off and refuse to deliver water to any diversion from the Big Lost River and tributaries above Mackay Reservoir that does not have an adequate measuring device and/or lockable controlling works during the 2002 irrigation season.

Dated this 4TH day of DECEMBER, 2001.


NORMAN C. YOUNG
ADMINISTRATOR

Attachment A
CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 6th day of December, 2001, the attached correspondence was served upon the following individuals by placing a copy of the same in the United States Mail, postage prepaid, certified with a return receipt and properly addressed as follows:

Scott Johnson, Churndasher Ranch
5366 Fish Hatchery Rd
Mackay, Id 83251

Terri Pritchett
5395 Old Chilly Rd.
Mackay, Id 83251

Herb Whitworth
5425 Hwy 93 N
Mackay Id 83251

Walt Johnson
Star Rt.
Mackay, Id 83251

North Fork Association
165 Phillip Rd.
Woodside, Ca 94062

Mountain Springs Ranch LLC
5550 Barton Flat Rd.
Mackay, Id 83251

Chris Isom
General Delivery
Mackay, Id 83251

Simmons Trust
HC 63 Box 1552
Challis, Id 83226

Joe Cusher
759 S Stout Ave.
Blackfoot, Id 83221

Terrance Donahue
5448 Fish Hatchery Rd.
Mackay, Id 83251

Logan Williams
6558 Bartlett Point Rd.
Mackay, Id 83251

Bret Zollinger
5332 Fish Hatchery Rd.
Mackay, Id 83251

Roger Sorenson
245 N Hooper
Soda Springs, Id 83276

Dennie Donahue
5195 Hwy 93 N
Mackay, Id 83251

Clint Bitton
6344 Trail Creek Rd.
Mackay, Id 83251

No Telum Creek Ranch
Scheu Development Comp.
4550 E Thousand Oaks Blvd Ste. 2
West Lake Village, Ca 91362

Sally Johnson & Diane Hatmaker
6244 Bartlett Point Rd.
Mackay, Id 83251

Robert Unger
24121 SW Newland Rd.
Wilsonville, Or 97070-6705

Joan Johnson
6244 Bartlett Point Rd.
Mackay, Id 83251

Mark Gates
Big Lost River Ranch
700 Emerson St.
Palo Alto, Ca 94301

Alex Cherian
PO Box 720
Ketchum, Id 83340

Blake Quinn
Six X Ranch
PO Box 596
Mackay, Id 83251



Dayna M. Ball, Office Specialist II
Water Distribution Section

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

CERTIFIED MAIL

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720
Boise, Idaho 83720-0098

Return Service Requested



7099 3220 0006 2688 0617

**NOT DELIVERABLE
AS ADDRESSED,
UNABLE TO FORWARD**



CHRIS ISOM
GENERAL DELIVERY
MACKAY ID 83251

**RECEIVED
DEC 17 2001**

Department of Water Resources

